



U.S. Department of
Transportation

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-97-3209

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Air Liberté S.A.**

Date Filed: December 8, 1997

Relief requested: Exemption from 49 U.S.C. § 41301 and statement of authorization pursuant to 14 CFR 212 of the Department's regulations to display the designator code of American Airlines (AA), Inc., on flights operated by Air Liberté between Paris and Bordeaux-Montpellier-Nice-Strasbourg-Toulouse-Annecy-Brive-Carcassonne-Figari-La Rochelle-Lannion-Metz/Nancy/Lorraine-Nantes-Perpignan-Rodez-Toulon/Hyers, for a period of two years.

If renewal, date and citation of last action: New authority

Applicant representative: Don Hainbach 202-822-9070

Responsive pleadings: US Airways, Inc., United Air Lines, Inc., Northwest Airlines, Inc., and Delta Air Lines, Inc., filed answers urging dismissal or deferral of Air Liberté's application pending conclusion of a new U.S.-France aviation agreement providing for code sharing. Continental Airlines (CO)/Continental Micronesia (CMI), Inc., filed a joint answer requesting denial until (1) France approves CO- CMI's pending Guam-Noumea application; (2) the Department approves a CO-Air France code share; and (3) the Department considers the anticompetitive effects of AA/Air Liberté code-sharing in conjunction with American's other proposed code shares and requests for antitrust immunity, particularly in view of British Airways' ownership interest in Air Liberté. British Midland Airways Limited filed comments urging the Department to ensure that other U.S. carriers are granted rights for unlimited code sharing involving France with partners of their choice. Air Liberté and American filed a joint reply stating that, if the Department is not prepared to grant its limited request at this time, it should defer action (rather than dismiss) pending completion of negotiations for a new U.S.-France agreement. It further stated that the Department is considering all of the competitive effects of the proposed AA-British Airways alliance and there is no need to relitigate that alliance in this proceeding. CO/CMI filed a joint surreply stating that the Air Liberté/American reply provided no basis for approval of the requested authority and reemphasizing arguments made in its previous pleading. (We granted all motions for leave to file.)

DISPOSITION

Action: Approved in part, Remainder dismissed ¹

Action date: April 29, 1998

Effective dates of authority granted: April 29, 1998, through April 29, 1999

Remarks: The authority is encompassed in the 1998 Memorandum of Consultations between the United States and France. ² We found, based on the record, that the applicant is operationally and financially qualified to conduct the proposed services and properly licensed. The FAA has advised us that it knows of no reason to withhold this authority. Further, despite the presence of non-homeland interests, we found, taking

¹ We dismissed that portion of the carrier's application to conduct the operations beyond April 29, 1999, without prejudice to refile at a later date. The duration of this authority is consistent with our usual policy of granting interim exemption authority in cases such as that presented here.

² On April 8, 1998, the United States and France signed a Memorandum of Consultations (MOC) and initialed the text of a framework for a new Air Transport Agreement (Agreement). The MOC also noted the intentions of each Party to permit immediately, on the basis of comity and reciprocity, operations consistent with the terms of the Agreement.

into account the nature of the authority at issue in this case, that there was nothing in the ownership and control of the carrier that would be inimical to U.S. aviation policy or interests. Therefore, we concluded that waiver of our standard requirement that substantial ownership and effective control of a foreign carrier rest in the hands of citizens of its homeland was warranted. We further determined that the concerns raised by CO/CMI regarding other alliances involving American Airlines did not, in the circumstances presented, warrant our undertaking the review it proposed or otherwise delaying award of the requested authority. Regarding CMI's concern about its proposed Guam-Noumea services, we noted that services between the United States and French territories are the subject of ongoing negotiations with the Government of France, and we found that it would not be consistent with the public interest to withhold the already bilaterally-agreed authority at issue here pending completion of that process. Finally, regarding approval of a CO-Air France code share, and any other code-share applications, we noted that we are aware of the MOC provisions on code sharing and we made clear that we fully intend to act consistently with them.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached)

Special conditions: The code-sharing conducted under this authority must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept all obligations established in its contract of carriage with the passenger; that the passenger liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order-letter. Filing of a petition shall not stay the effectiveness of this action.)